



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2017 Biennium

<b>Bill #</b>	SB0292	<b>Title:</b>	Create a drug formulary for workers' compensation
<b>Primary Sponsor:</b>	Rosendale, Matthew M	<b>Status:</b>	As Introduced

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$31,000	\$8,500	\$0	\$0
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**Description of fiscal impact:** This bill requires that the Department of Labor and Industry (DLI) establish rules implementing an outpatient drug formulary as well as establish rules implementing an independent medical review process for disputes.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Labor & Industry (DLI)**

1. The Department of Labor and Industry, Employment Relations Division, would need to contract with a workers' compensation consultant with expertise in outpatient drug formularies. This consultant would help the department evaluate various drug formularies, navigate options available, and assist with developing a road map for implementation that would fit with the Montana Workers' Compensation system. The consultant would also be requested to recommend best practices for the handling of compound prescription drugs and the determination of maximum morphine equivalents as authorized in Section 1 of this legislation. The consultant would advise the department on how to define the dispute resolution process as outlined in Section 1 of the bill. The department estimates this would cost approximately \$25,000.
2. In the year after implementation, the department estimates there would be project management fees of approximately \$2,500.

3. In order to provide seamless implementation for stakeholders, the department would provide training seminars to users/providers when the drug formulary was implemented. It is estimated that six trainings across Montana would be optimal with an estimated cost of \$12,000. This cost would be split between FY 2016 and FY 2017. The department would also look at providing webinars and an annual training update for all stakeholders.
4. In order to establish the rules required in this legislation, the department estimates it would take 250 staff hours of current FTE.
5. Until it is established which outpatient drug formulary would be implemented, it is difficult to estimate the full costs to the department, insurers and users/providers.
6. In FY 2016, \$31,000 would be funded out of state special revenue Workers' Compensation Fund. In FY 2017, \$8,500 would be funded out of the Workers' Compensation Fund. The Workers' Compensation Fund is currently experiencing a shortfall in revenue due to declining workers' compensation benefits. SB 259 has been requested on behalf of the department to increase the amount that can be assessed in order to pay for current expenditures. Without passage of SB 259, the expenses would need to be paid from the general fund.

**Montana State Fund (MSF)**

7. Montana State Fund will only pay for prescription drugs within the formulary unless a non-formulary drug is medically necessary.
8. For year 2013, 16.9% of all medical benefits paid in Montana were for prescription drugs. The national average is 11.5%. Statistics are based on services provided during calendar year 2013, derived from data reported in National Council on Compensation Insurance (NCCI) Medical Data Call.
9. Texas and Washington State have implemented rules for prescription drug formularies. By applying the Texas and Washington State formularies to MSF payments at a mean savings scenario, the MSF payments for non-formulary drugs could be reduced between \$1.7 and \$3.9 million. However, the savings will depend on the formulary that is adopted.
10. Disputes concerning the denial of drugs that are outside of the formulary will be subject to a medical review process.

	<b><u>FY 2016 Difference</u></b>	<b><u>FY 2017 Difference</u></b>	<b><u>FY 2018 Difference</u></b>	<b><u>FY 2019 Difference</u></b>
<b><u>Fiscal Impact:</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses	\$31,000	\$8,500	\$0	\$0
<b>TOTAL Expenditures</b>	<b>\$31,000</b>	<b>\$8,500</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Funding of Expenditures:</u></b>				
State Special Revenue (02)	\$31,000	\$8,500	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<b>\$31,000</b>	<b>\$8,500</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	(\$31,000)	(\$8,500)	\$0	\$0

**Technical Notes:**

1. The Department of Labor and Industry, Employment Relation Division would attempt to find a public domain formulary that would work with the Montana Workers' Compensation. A public domain formulary could reduce licensing costs however there could be costs for users if they choose to purchase a special access web tool. One example of a known public domain formulary has web tools available for users/providers to better navigate the system. These tools may provide an expense for the users/providers.
2. The provisions of section 1, amending 39-71-727(1)(e), pertaining to an insurer's non-liability for a non-formulary drug needed by the injured worker, but for which prior authorization is not obtained, does not include an emergency or urgency exception. The limitation of the formulary to outpatient drugs provided for in 39-71-727(1)(a), MCA, is not expressly applicable to the provisions of subsection (1)(e). As such, the denial of liability for medically necessary drugs in an emergency or inpatient context might raise an equal protection issue with respect to injured workers whose conditions could be treated with approved formulary drugs. It is unclear whether the dispute resolution provisions of 39-71-727(1)(f), MCA, are applicable in inpatient or emergency treatment.
3. The language found on page 1, line 5, that describes the bill as "authorizing" the adoption of a drug formulary is inconsistent with the language at page 1, line 16, stating that the department "shall" adopt a drug formulary.
4. The terms "formulary" and "drug formulary" are not expressly defined in the bill.

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*Sponsor's Initials*\_\_\_\_\_  
*Date*\_\_\_\_\_  
*Budget Director's Initials*\_\_\_\_\_  
*Date*